

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

FELTON L. MATTHEWS, JR.,

Plaintiff,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No. 3:16-cv-00077-MMD-VPC

ORDER REGARDING REPORT AND
RECOMMENDATION OF
MAGISTRATE JUDGE
VALERIE P. COOKE

I. SUMMARY

Before the Court are two Reports and Recommendations of United States Magistrate Judge Valerie P. Cooke. In the first Report and Recommendation entered on June 15, 2016 ("June 15 R&R"), the Magistrate Judge addresses a motion to dismiss ("Motion") (ECF No. 15) filed by defendants the United States of America, the U.S. Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") (collectively "the Federal Government"). Plaintiff filed a partial objection (ECF No. 36) and the Federal Government filed a response (ECF No. 41.)¹ In the second Report and

¹Plaintiff then filed a reply in response to the Federal Government's objection. (ECF No. 43.) Local Rule IB 3-2(a) provides that a reply in response to an objection to a magistrate judge's report and recommendation will be allowed only with leave of court. LR IB 3-2(a). Plaintiff did not seek leave of court to file his reply. Plaintiff's reply also misses the point. The Court will strike Plaintiff's reply.

1 Recommendation entered on June 24, 2016 (“June 24 R&R”), the Magistrate Judge
2 recommends denying Plaintiff’s motion for preliminary or permanent injunction (ECF No.
3 4) and motion for partial summary judgment (ECF No. 21) (collectively “Plaintiff’s
4 Motions”). (ECF No. 35.) Plaintiff objected (ECF No. 37) and the Federal Government
5 responded (ECF No. 42). For the reasons discussed below, the Court adopts both
6 Reports and Recommendations.

7 **II. BACKGROUND**

8 Plaintiff is an inmate in the custody of the Nevada Department of Corrections
9 (“NDOC”) and is currently housed at the Ely State Prison (“ESP”). The events giving rise
10 to this action occurred while Plaintiff was held at various correctional facilities. Plaintiff
11 filed his complaint in the Eleventh Judicial District Court for Pershing County, Nevada,
12 asserting claims against various federal, state and local actors. (ECF No. 2-1.) In count
13 III of the complaint, Plaintiff seeks to assert a claim under the Federal Tort Claims Act
14 (“FTCA”) for its purported negligence in failing to prevent state actors from tampering
15 with Plaintiff’s mail and committing other civil rights violations. (ECF No. 2-1 at 4-5, 11-
16 12.)

17 On February 16, 2016, the Federal Government removed the action. (ECF No. 1.)
18 On February 24, 2016, Plaintiff filed his motion for injunctive relief. (ECF No. 4.) On April
19 18, 2016, the Federal Government filed its motion to dismiss. (ECF No. 15.) Plaintiff
20 opposed and moved for partial summary judgment. (ECF Nos. 18, 21.) The Magistrate
21 Judge recommends dismissing the single count (count III) against the Federal
22 Government. (ECF No. 31.)

23 The Court subsequently screened Plaintiff’s complaint pursuant to 28 U.S.C. §
24 1915A and dismissed claims (counts I and II) against the remaining defendants without
25 prejudice and with leave to amend. (ECF No. 32.)

26 **III. LEGAL STANDARD**

27 This Court “may accept, reject, or modify, in whole or in part, the findings or
28 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party

1 timely objects to a magistrate judge's report and recommendation, then the court is
2 required to "make a *de novo* determination of those portions of the [report and
3 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails
4 to object, however, the court is not required to conduct "any review at all . . . of any issue
5 that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
6 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
7 magistrate judge's report and recommendation where no objections have been filed. See
8 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
9 of review employed by the district court when reviewing a report and recommendation to
10 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
11 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
12 view that district courts are not required to review "any issue that is not the subject of an
13 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
14 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
15 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
16 which no objection was filed).

17 **IV. JUNE 15 R&R**

18 The Magistrate Judge recommends granting the Federal Government's motion to
19 dismiss because (1) the Court lacks subject matter jurisdiction to address Plaintiff's
20 FTCA claim against the DOJ and the FBI who, as agencies, cannot be sued under the
21 FTCA; (2) the Court lacks subject matter jurisdiction over the United States because
22 Plaintiff has failed to allege that he presented an administrative claim to the appropriate
23 federal agency or that his claim was denied; and (3) Plaintiff's conclusory allegations fail
24 to state a claim against the Federal Government. (ECF No. 31.) The Court agrees.

25 In his objection, Plaintiff contends he did take steps to file an administrative
26 complaint and identified letters or "brass slip receipts" showing that he sent complaints or
27 communications to "the U.S. Justice Department (court or U.S. Attorney or Civil Rights
28 Divisions)[.]" (ECF No. 36 at 1-2.) Such conclusory allegations about communications to

1 “the court or U.S. Attorney or Civil Rights Divisions” do not satisfy the FTCA’s
2 administrative exhaustion requirements. See 28 U.S.C. § 2675(a). Moreover, Plaintiff’s
3 objection addresses only one ground upon which the Magistrate Judge recommends
4 dismissal.

5 The Court agrees with the Magistrate Judge’s recommendation to dismiss the
6 Federal Government based on all three grounds articulated in the June 15 R&R. The
7 Court will therefore adopt the June 15 R&R.

8 **V. JUNE 24 R&R**

9 The Magistrate Judge recommends denying Plaintiff’s Motions because the
10 complaint fails to state a claim and the Motions are rendered moot by the Court’s
11 dismissal of the complaint without prejudice and with leave to amend, other than the
12 claim against the Federal Government which the Magistrate Judge recommends
13 dismissing without prejudice and without leave to amend. (ECF No. 35.) Plaintiff objects
14 and asserts that the action will be refiled. (ECF No. 37.) The Court agrees with the
15 Magistrate Judge and will adopt the June 24 R&R.

16 **VI. CONCLUSION**

17 It is therefore ordered, adjudged and decreed that the Reports and
18 Recommendations of Magistrate Judge Valerie P. Cooke (ECF Nos. 31, 35) are
19 accepted and adopted in full.

20 It is further ordered that Plaintiff’s reply in response to the Federal Government’s
21 objection (ECF No. 43) is stricken.

22 It is further ordered that the Federal Government’s motion to dismiss (ECF No.
23 15) is granted. Plaintiff’s FTCA claim (count III) is dismissed with prejudice and without
24 leave to amend as asserted against DOJ and the FBI. Plaintiff’s FTCA claim (count III) is
25 dismissed without prejudice and without leave to amend as asserted against the United
26 States. The Clerk is directed to enter judgment in favor of the Federal Government in
27 accordance with this Order.

28 ///

1 It is further ordered that plaintiff's motion for preliminary or permanent injunction
2 (ECF No. 4) and motion for partial summary judgment (ECF No. 21) are denied.

3 DATED THIS 26th day of September 2016.

4
5 

6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28